IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 13776 of 2007(S)

PETITIONER:

NANDANAN, S/O.VASU, AGED 42 YEARS,
CHANDRAMANGALATH VEEDU, CHOZHIAKKODU PO.,
KULATHUPUZHA VILLAGE.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS:

1. THE DISTRICT COLLECTOR, KOLLAM.

2. THE SECRETARY, KULATHUPUZHA GRAMA PANCHAYATH, KULATHUPUZHA, KOLLAM DISTRICT.

3. THE CHOZHIAKODE TOWN MUSLIM JAMA ATH CHOZHIAKOD, KULATHUPUZHA, PATHANAPURAM TALUK REPRESENTED BY ITS SECRETARY ALI AKBAR.

4. THE DISTRICT MEDICAL OFFICER,
OFFICE OF THE DISTRICT MEDICAL OFFICE,
COLLECTORATE, KOLLAM.

5. THE POLLUTION CONTROL BOARD,
DISTRICT OFFICER, POLLUTION CONTROL BOARD,
KOLLAM DISTRICT, KOLLAM.

6. THE CHIEF ENGINEER,
KERALA WATER AUTHORITY, THIRUVANANTHAPURAM.

7. THE CIRCLE INSPECTOR OF POLICE, KULATHUPUZHA.

8. THE SUB INSPECTOR OF POLICE, KULATHUPUZHA.

R3 BY ADV. SRI.S.ABDUL RAZZAK

R2 BY ADV. SRI.C.J.JOY
STANDING COUNSEL FOR POLLUTION CONTROL BOARD
SRI.M.K.CHANDRAMOHAN DAS
SENIOR GOVERNMENT PLEADER SRI.M.R.SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE SALE DEED NO.39/2001

EXT.P2 TRUE PHOTOCOPY OF THE ORDER DATED 9.9.2004.

EXT.P3 TRUE PHOTOCOPY OF THE JUDGMENT DATED 7.1.2005

EXT.P4 TRUE PHOTOCOPY OF THE JUDGMENT OF THE DIVISION BENCH DATED 4.3.2005 IN W.A.NO.491/2005.

EXT.P5 TRUE PHOTOCOPY OF THE ORDER DATED 2.3.2005.

EXT.P6 TRUE PHOTOCOPY OF THE ORDER DATED 29.8.2005.

EXT.P7 TRUE PHOTOCOPY OF THE LIE OF THE PROPERTY, THE SURROUNDING PROPERTIES, THE STREAM, POOVAR, KALLADA RIVER ETC.

RESPONDENTS' EXHIBITS:

ANNEXURE R3(A) PHOTOCOPY OF LICENCE.

//TRUE COPY//

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H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.P.(C) NO. 13776 OF 2007

Dated this the 14th June, 2007

JUDGMENT

K.T.SANKARAN, J.

This Writ Petition is filed as a public interest litigation by one Nandanan. The reliefs prayed for in the Writ Petition are the following:

> "i) to call for the records leading to Exhibit P2 and P6 and quash the same by the issuance of a writ of certiorari or any other appropriate writ, direction or order;
>
> ii) issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents Nos.1, 2 and 4 to 8 are not allow the 3rd respondent or its members to bury any dead body in the property.
>
> Iii) to declare that the property is not fit place for opening a burial ground.
>
> iv) to grant such other reliefs this Hon'ble Court may deem fit and proper to grant in the facts and circumstances of the case."

2. The property in question was purchased by one Ali Akbar as per Exhibit P1 registered document No.39/01 dated 8.1.2001. Ali Akbar is the Secretary of Chozhiyakkod Town Muslim Jama ath. In Ext.P1 it is mentioned that the property could be utilised as a burial

ground.

3. An application was filed by the Jama -ath before the District Collector for granting licence for opening a burial ground in the property. The application was filed under Rule 6 of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules. The District Collector passed Ext.P2 order dated 9.9.2004, allowing the application for licence for opening the burial ground. The District Collector conducted an enquiry as directed by this Court in O.P.No.29720 of 2001. Ext.P2 order was challenged by one Kusalan and Jayakumar in W.P.(C) No.29100 of 2004, which was dismissed by Ext.P3 judgment dated 7.1.2005, wherein this Court held thus:

> "10. The District Collector has rightly rejected the objections raised by petitioner No.1 who, admittedly has no interest in the property at present. Therefore, the contentions raised by the petitioners that respondent Nos.3 and 4 are not entitled to get a licence to establish a burial ground, is wholly untenable. In my view, the District Collector was justified in overruling the objections raised by petitioner No.1. As mentioned earlier, petitioner No.2 who is the present owner of the property, has not raised any objection so far against the proposed burial ground. I have carefully perused the file produced by the learned Government Pleader in relation to the propoed burial ground and also the documents produced by the parties in this writ petition. Ext.R3(b) sketch prepared by the Village Officer, Kulathippuzha Village as well as the reports of the Tahsildar and the District Medical Officer clearly show that the objections raised by petitioner No.1 are untenable."

4. Ext.P3 judgment in W.P.(C) No.29100 of 2004 was challenged by one Sudevan and Nandanan, who were not the petitioners in that Writ Petition, in W.A.No.491 of 2005. W.A.No.491 of 2005 was disposed of by Ext.P4 judgment dated 4.3.2005, which reads as follows:

> "Mr.Rajendran, learned counsel for the appellant submits that this Writ Appeal may be dismissed as withdrawn without prejudice to the right of the appellant to file a separate Writ Petition challenging Ext.P5 order of the District Collector. Hence, the Writ Appeal is dismissed as withdrawn without prejudice to the right of the appellant to file separate Writ Petition challenging Ext.P5 order of the District Collector."
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> (Exhibit P2 order dated 9.9.2004 was marked as Exhibit P5 in O.P.No.29100 of 2004)

5. As directed in Ext.P4 judgment, the order dated 9.9.2004 was not challenged either by Sudevan or by Nandanan in any Writ Petition. On the other hand, Nandanan has filed this Writ Petition as a public interest litigation, after two years of passing of Ext.P4 judgment in W.A.No.491 of 2005.

6. After passing Ext.P3 judgment, it would appear that the District Collector had initiated some proceedings and enquiry was conducted on 9.3.2005, as evident from Ext.P5. Ext.P6 intimation dated 29.8.2005 was issued by the District Collector to the petitioner intimating that licence was

issued on 15.5.2005. Even thereafter, the petitioner has not filed any appeal as provided under the Rules or any Writ Petition as directed in Ext.P4 judgment in Writ Appeal No.491 of 2005. On the other hand, after the lapse of two years, he has challenged Exts.P3 and P6 under the guise of a public interest litigation.

The Writ Petition lacks merits and therefore, the same is dismissed.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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